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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Transistor Devices, Inc.

Serial No. 75328593

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Transistor Devices, Inc.

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Before Seeherman, Bucher and Drost, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On July 22, 1997, Transistor Devices, Inc. (applicant)
applied to register the mark TRANSISTOR DEVICES in typed
form for goods ultimately identified as "electrical power
supplies" in International Class 9.¹

Initially, the examining attorney refused to register
applicant's mark on the ground that it was merely

¹ The application (Serial No. 75328593) alleges a date of first
use anywhere and in commerce of October 31, 1960.

descriptive of applicant's goods under Section 2(e)(1) of the Trademark Act. 15 U.S.C. § 1052(e)(1). In its request for reconsideration dated December 8, 1999, applicant amended the application to seek registration under the provision of Section 2(f) of the Trademark Act on the ground that applicant's mark had acquired distinctiveness. At that point, the examining attorney held that the mark was generic and that it was not registrable under the provision of Section 2(f).

After the examining attorney made the refusal on the ground of genericness final, applicant appealed to this Board.²

"The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question." H. Marvin Ginn Corp. v.

² Genericness is the only issue on appeal. The examining attorney does not challenge applicant's evidence of acquired distinctiveness other than to maintain that "since it is the examining attorney's contention that the entire mark is generic, the discussion as to acquired distinctiveness is irrelevant." Examining Attorney's Brief at 6. Applicant "has moved for registration under §2(f) to expedite the registration process." Applicant's Brief at 2. However, evidence of acquired distinctiveness is also relevant to the issue of genericness. Thus, we regard the examining attorney's statement to indicate that, if TRANSISTOR DEVICES is found not to be generic, the evidence of acquired distinctiveness is sufficient to demonstrate that the mark is entitled to registration under the provision of Section 2(f).

Int'l Association of Fire Chiefs, Inc., 782 F.2d 987, 228

USPQ 528, 530 (Fed. Cir. 1986). Ginn goes on to explain that:

Determining whether a mark is generic therefore involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services?

Id.

We begin by analyzing the evidence of genericness. The examining attorney submitted a definition of a "transistor" as "a solid-state electronic device that is used to control the flow of electricity in electronic equipment and consists of a small block of a semiconductor (as a germanium) with at least three electrodes."³ There is no doubt that applicant's products contain transistors. See Instruction Manual SPS 2318, pp. 2-3 ("This unregulated DC is regulated by the pass transistor configuration" and the "reference voltage is compared with the output voltage by the action of voltage divider network R3, R2, and R1 (voltage adjust) and differential amplifier transistors Q2 and Q3").

³ Online Merriam-Webster Dictionary. We take judicial notice of this definition. University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

The examining attorney also submitted printouts from the LEXIS/NEXIS database to show that the words "transistor device[s]" are used together in many articles. A sampling of the articles is set out below.

To avoid this problem, you can use two simple bipolar transistors to latch-off the whole SMPS in the case of an optocoupler failure (Figure 3a). You wire the bipolars in a thyristor manner using a dual-transistor device such as the MBT3946D.
EDN, December 7, 2000.

Because of its low off-state leakage current, this true enhancement mode device eliminates the drain-supply switch required for depletion-mode pHEMT and metal semiconductor field-effect-transistor devices.
Electronic Buyers News, December 4, 2000.

The new FPGA family, called Virtex-E, includes a 2-million-gate, 150-million transistor device.
Electronic Buyers News, October 18, 1999.

Availability of multimillion transistor devices means single instruction multiple data processing has finally been brought to the fore...
Electronics Weekly, October 11, 2000.

Pact GmbH ... rolls out one of the most complex CPUs of the crowd: a 30-million-transistor device that integrates 128 thirty-two bit processors.
Electronics Engineering Times, October 9, 2000.

A team from Japan's NTT research laboratories has gone beyond the realm of single-transistor devices to build the first elemental circuit using single-electron transistors.
Electronics Engineering Times, October 9, 2000.

Title: Combination positive temperature coefficient resistor and metal-oxide semiconductor field-effect transistor devices.
Wisconsin State Journal, September 28, 2000.

These organic semiconductors have tremendous potential for applications in optical memory, ... solar energy converters and field-effect transistor devices.
Plastics News, September 4, 2000.

[I]t avoids the limitations of SRAM programmable routing. And, the RC coefficient of the eASICore is significantly lower than that of SRAM-controlled pass transistor devices, thus yielding performance comparable to that of standard-cell technology.
EDN, September 1, 2000.

These results allow aggressive, next generation transistor devices to be developed using currently available DUV optical lithography.
Solid State Technology, July 1, 2000.

In a couple of concessions to the James Bond secret-agent genre from which "Mission" and its TV-inspired predecessor spring, there comes an array of tiny transistor devices that allow the characters both to talk to one another and track one another physically across long and congested distances.
State Journal-Register (Springfield, Illinois), June 1, 2000.

The next stage in the design process was to characterize the transistor device employed. The state-of-the-art pHEMT device selected was the model LPS 200.
Microwave Journal, February 1, 2000.

The new curve-fit methods are applied to microwave and RF transistor devices.
Microwave Journal, December 1, 1999.

Vishay's latest monolithic transistor devices combine two automatic gain controlled (AGC) amplifiers on a single chip.
Electronics Times, September 13, 1999.

Based on this evidence, the examining attorney argues that the "articles clearly show that the phrase 'transistor

devices' is commonly used in relation to electrical products." Brief at 5.

Applicant, in response, argues that while its goods contain transistors, its goods are electrical power supplies, not transistors. "By way of analogy, an engine and a transmission are important components of a motor vehicle, but one would never refer to a motor vehicle as a 'muffler device,' an 'engine device' or a 'transmission device' because a vehicle comprises many other components." Reply Brief at 3. In addition, applicant argues that "none of the articles establish[es] that an electrical power supply is commonly known or referred to as a 'transistor device.'" Reply Brief at 5 (emphasis omitted). Applicant points out that "in many of the articles cited by the Examining Attorney, the term 'transistor device' is used to refer to the transistor itself, or to a transistor fabricated upon a semiconductor substrate, i.e., a component of a larger device or system, and not the system itself." Reply Brief at 4 (emphasis omitted).

A "proper genericness inquiry focuses on the description of services [or goods] set forth in the certificate of registration." Magic Wand Inc. v. RDB Inc., 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991). The Federal Circuit has also made it clear that the evidence

must show that more than a small part of the relevant purchasers would identify the term as the genus of the goods.

According to the certificate of registration, the TOUCHLESS mark applies to automobile washing services, not automobile washing equipment. Thus, the relevant purchasing public for automobile washing services encompasses automobile owners and operators. Vendors, operators, and manufacturers of washing equipment fall within the relevant public only as potential or actual customers. These vendors, operators, and manufacturers are a very small part of the relevant purchasing public. Accordingly, evidence of generic use by this small part of the relevant purchasing public has limited probative value. The TTAB did not clearly err in concluding that this evidence, considered along with the evidence of industry use, is not enough to show generic use or understanding by the relevant public.

Magic Wand, 19 USPQ2d at 1553-54.

Therefore, we must focus on whether the term "transistor devices" is generic for electrical power supplies to a significant number of relevant purchasers.

Regarding the prospective purchasers, applicant's evidence shows that many of its products may be purchased by careful, sophisticated purchasers. There is some evidence that other customers may be less sophisticated.

See, e.g. *TDI 15W Battery Backup Power System* ("This unit provides reliable power for H-ISU (Home Integrated Services Units)"). However, applicant's identification of goods "electrical power supplies" does not necessarily limit the

purchasers to careful and sophisticated purchasers and we must consider the purchasers of its goods in this manner.

We now address the two factors posed by Ginn. First, we look at what the genus of applicant's goods is. In re American Fertility Society, 188 F.3d 1341, 51 USPQ2d 1832, 1836 (Fed. Cir. 1999). It appears that applicant's goods would be part of the genus of electrical power supplies or simply power supplies. The evidence of record does not support a conclusion that applicant's goods are part of a genus known as "transistor devices." To the extent there is a genus of "transistor devices," it appears to relate to specialized electrical products such as parts of computers. The evidence concerning the term "transistor devices" shows that it refers to specific products rather than showing use as a broad term applied to a wide range of goods such as "electrical products."

Second, we look at whether the term is understood by the relevant public to refer to the genus of the goods. The question of whether the relevant public understands the term "transistor devices" to refer to the genus of applicant's goods is a close question. Ginn, 228 USPQ at 530. "Evidence of the public's understanding of the term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in

dictionaries, trade journals, newspapers, and other publications." In re Merrill Lynch, Fenner and Smith Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question." Ginn, 228 USPQ at 530. Before we can hold that applicant's term "transistor devices" is generic, we need some evidence to show that the public uses the term to refer to the genus of the goods. In re American Fertility Society, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999) (SOCIETY FOR REPRODUCTIVE MEDICINE held not generic for association services because there was no evidence of generic use of the term). "The Board cannot simply cite definitions and generic uses of the constituent terms of a mark, or in this case, a phrase within the mark, in lieu of conducting an inquiry into the meaning of the disputed phrases as a whole to hold a mark, or a phrase within the mark, generic. Id. at 1836. See also In re Dial-A-Mattress Operating Corp., 240 F.3d 1341, 57 USPQ2d 1807, 1811 (Fed. Cir. 2001) ("There is no record evidence that the relevant public refers to the class of shop-at-home telephone mattress retailers as '1-888-M-A-T-R-E-S-S'").

We note that applicant's goods contain transistors and there is evidence of use of the term "transistor devices" to refer to certain products containing transistors. However, we ultimately conclude that the public would not understand the term "transistor devices" to be the genus of applicant's electrical power supplies. We agree with applicant that the fact that its goods contain transistors does not make the term "transistor devices" generic for the goods. Previously, the CCPA held that the term AUTOMATIC RADIO was not even merely descriptive for radios having an automatic volume control. In re Automatic Radio Mfg. Co., 404 F.2d 1391, 160 USPQ 233 (CCPA 1969).

We quite agree that "automatic volume control" is wholly descriptive of that feature of a radio receiver, but that does not make AUTOMATIC merely descriptive of the radio receiver. Nor does it make "AUTOMATIC RADIO" the *name* of the receiver.

Id. at 235 (emphasis in original).

Therefore, we now look to see if there is evidence that would indicate that the relevant purchasers recognize "transistor devices" as the genus of the goods. In this case, the evidence of the use of the term "transistor devices" does not show that either (1) the term is used to refer to any product containing a transistor(s) or (2) that it is used to refer to electrical power supplies. If applicant's goods were circuit boards or computers, the

case might be different, but the goods here are electrical power supplies. Transistors seem to be ubiquitous, and they are used in a wide variety of products. See e.g., The Art of Electronics, p. 50 ("The transistor is the essential ingredient of every electronic circuit, from the simplest amplifier or oscillator to the most elaborate digital computer"). They were invented more than fifty years ago. Ian M. Ross, *The Invention of the Transistor*, IEEE 1998), p. 1. However, despite the widespread use of transistors over a long period, there is little evidence that the term "transistor device" is used to identify a broad category of products defined by the fact that they contain transistors. Nor is there evidence that electrical power supplies are referred to as "transistor devices." Evidence that different products may be referred to as "transistor devices" does not establish that electrical power supplies are referred to as transistor devices.

The examining attorney relies on the case of In re Analog Devices Inc., 6 USPQ2d 1808 (TTAB 1988), aff'd unpub., 871 F.2d 1097 (Fed. Cir. 1989). In that case, the Board found that the term ANALOG DEVICES was generic for various computer products. There were dictionary definitions for the term "analog device" that supported a conclusion that the term defined a category or class of

devices having analog capabilities. The Board concluded that "at least some of the goods, such as analog to digital and digital to analog converters, analog computational circuits and analog multipliers/dividers would, in our view, fall within the category of analog devices." 6 USPQ2d at 1810. In the present case, there is much less evidence that there is a genus of goods identified as "transistor devices." Unlike the situation in Analog Devices, there are no dictionary entries that define "transistor devices." More importantly, it is not at all clear whether applicant's goods would be referred to as "transistor devices" merely because its goods contain transistors.

"The burden of showing that a proposed trademark is generic remains with the Patent and Trademark Office." Merrill Lynch, 4 USPQ2d at 1143. The Office must show by "clear evidence" that the mark is generic. Id.; see also In re Central Sprinkler Co., 49 USPQ2d 1194, 1196 (TTAB 1998) (internal quotation marks omitted) (The Office has "the burden of proving this refusal with clear evidence of genericness"). "[A]ny doubt on the matter [of genericness] should be resolved in applicant's favor." In re Waverly, Inc., 27 USPQ2d 1620, 1624 (TTAB 1993).

When we review the evidence in this light, we are not persuaded that the Office has meet its burden of showing that the term TRANSISTOR DEVICES is generic for electrical power supplies. Inasmuch as the examining attorney has not contested applicant's claim of acquired distinctiveness beyond noting that it is irrelevant to overcome a genericness refusal, the examining attorney does not maintain that there is any other bar to the publication of this mark for opposition.

Decision: The refusal of registration is reversed.